

**INDIANA COURT OF APPEALS  
CASE AT A GLANCE**



***Idan (John) Filip and Valaria Filip v. Carrie Block and 1st  
Choice Insurance Agency***

**Appeal from:**  
Starke Circuit Court  
(Knox, Indiana)

The Honorable Kim Hall,  
Judge

**Oral Argument:**  
Monday, October 23, 2006  
10:30—11:10 a.m.  
20 minutes each side

***In this case, the Indiana Court of Appeals is asked to examine three  
different issues of law:***

**TORT LAW**

Did the insurance agent breach her duty to adequately advise the Filips when buying insurance coverage and subsequently to notify them that the acquired coverage was inadequate?

**EVIDENCE**

At the trial court level, the insurance company filed a motion for “summary judgment,” a procedural device used to resolve a dispute without a trial when there is no issue as to the facts that would determine the outcome. In doing so, the insurance company submitted both a list of “designated evidence” and a “Memorandum of Law” that selected some of the listed evidence to support their position. The Filips opposed the motion for summary judgment, but did not designate any specific evidence to support their view.

In support of their opposition to the motion for summary judgment, may the Filips rely on the insurance company’s designated evidence when they filed their motion for summary judgment, or are the Filips limited to the more restrictive designated evidence used in the insurance company’s Memorandum of Law?

**STATUTE OF LIMITATIONS**

Is the Filips’ negligence action against their insurance agent and insurance company, arising out of a fire loss which occurred in 2003, barred by the two-year statute of limitations to file a cause of action?

*Filip v. Block***CASE SYNOPSIS****Facts and Procedural History**

In December of 1998, John and Valaria Filip purchased the Sundown Apartments located at 3030 South U.S. Highway 35 in Knox, Indiana, from Coet Bailey. The Filips lived at the Apartments and rented out the five additional units. At the time of purchase, the Filips were advised that the Apartments were insured by Auto Owners Insurance Company and that the insurance was handled by Carrie Block, an insurance agent for 1<sup>st</sup> Choice Insurance Agency. Accord-

ingly, in January of 1999, the Filips met with Block and informed her that they wanted to continue the same insurance coverage which had been in effect when the property was owned by Bailey. At the meeting, Block filled out the application for insurance, which included \$250,000 in coverage on the building to be valued at actual cash value and \$25,000 on personal property to be valued at replacement cost. Valaria Filip signed the insurance application without reading it.

**DEFINITIONS**

**Tort:** A non-criminal breach of a legal duty one person owes to another that results in injury.

**Summary Judgment:** A procedural device to resolve a dispute without a trial when there is no issue as to the facts that would determine the outcome and one party is entitled to judgment as a matter of law.

**Motion for Summary Judgment:** A written request made by one of the parties to the trial court that the court enter judgment without a trial on the merits because there is no genuine issue of material fact to be decided.

**“Designated” Evidence:** Evidence submitted to the Court along with the pleadings for resolution of a motion for summary judgment.

**Memorandum of Law:** A party’s written statement in support of its motion for summary judgment, containing its legal arguments presented to the court.

## **Case Synopsis (continued)**

In January of 2003, the Filips called Block and indicated that they had made some improvements to the Apartments and wanted to increase their coverage limits. Pursuant to the phone call, the building's limits were increased from \$250,000 to \$350,000. When the change was made, Auto Owners Insurance changed the valuation on the real property from actual cash value to replacement cost. However, Auto Owners Insurance caught the mistake and changed the policy back to actual cash value.

On April 8, 2003, a fire occurred which substantially destroyed the Apartments. On September 23, 2003, the Filips filed a Complaint against Block and 1<sup>st</sup> Choice, alleging that Block and 1<sup>st</sup> Choice had been negligent in advising them on the selection of adequate insurance. Specifically, the Filips asserted that Block had a duty of ordinary care to explain to the Filips the difference between replacement cost coverage and actual cash value coverage and she

should have advised the Filips to procure business interruption loss coverage. In light of these assertions, the Complaint enumerated the following items of damage:

A. The buildings were not insured under a replacement cost coverage, and the actual value coverage provided in the policy was approximately \$50,000 less than the cost required to rebuild the units.

B. The policy only provided limits of \$25,000 on business personal property which was at least \$17,000 less than was required to replace that business personal property.

C. The policy provided no coverage for personal property in the unit that the Filips used as a dwelling, resulting in an uninsured loss of \$128,000.

### **Opinion in this case expected:**

By the end of Calendar Year 2006

*For the convenience of residents of University Place, a printed copy will be forwarded to Barbara Irwin.*

**For more information, please visit the Indiana Court of Appeals website at <http://www.in.gov/judiciary/appeals/>**

**Or contact:**  
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## **Case Synopsis (continued)**

D. The policy failed to provide business interruption insurance, which resulted in an uninsured loss of at least \$30,000.

Following a hearing, the trial court granted Block's and 1<sup>st</sup> Choice's motion for summary judgment and dismissed the case. The trial court concluded that (1) because the Filips' cause of action accrued on the day when they entered into the insurance contract in January of 1999, their Complaint, filed in September of 2003, is barred by the two-year statute of limitations for negligence actions; (2) as the trial court can only consider detailed references to evidentiary materials, the Filips can only rely on the specific references as used in the Memorandum of Law, which accompanies the Motion for Summary Judgment; and (3) based on the designated evidence, Block did not breach her duty of ordinary care in the procurement of insurance for the Filips.

### **Parties' Arguments**

On appeal, the Filips contend that their action was brought well within the two-year limitation as the fire damage occurred six months prior to filing the Complaint. They also maintain that they can refer to all

evidentiary material listed in the motion for summary judgment and are not limited to how the evidence was specifically used in Block's and 1<sup>st</sup> Choice's Memorandum of Law. Lastly, the Filips argue that in her exercise of ordinary care, Block should have advised and explained the need for adequate insurance coverage.

In response, Block and 1<sup>st</sup> Choice request this court to affirm the Order of the trial court. Specifically, they argue that the statute of limitations for the negligent failure to procure insurance commences to accrue on the date the insurance policy is entered into. Accordingly, they claim the Filips' cause of action is barred. Also, they assert that the Filips can only rely on the designated evidence as used in the Memorandum of Law. As such, Block and 1<sup>st</sup> Choice contend that the evidence presented does not show that Block breached her duty of reasonable care in obtaining insurance for the Filips, let alone that she breached her fiduciary duty to advise the Filips in their procurement.

The Court of Appeals hears oral argument at venues across the state to enable Hoosiers to learn about the judicial branch.

This initiative began just prior to the Court's centennial in 2001.

**Today's oral argument is the 166th case the Court of Appeals has heard "on the road" since early 2000.**

Sites for traveling oral arguments are often law schools, colleges, high schools, and county courthouses. Today's case is the second the Court has heard at a retirement community.

## TODAY'S PANEL OF JUDGES

### **Hon. James S. Kirsch (Marion County), Presiding**

- Judge of the Court of Appeals since March 1994
- Chief Judge of the Court since March 2004

**James S. Kirsch** was appointed to the Court of Appeals in March 1994 and was elected Chief Judge in March 2004. A native of Indianapolis, Judge Kirsch is a graduate of the Indiana University School of Law at Indianapolis (J.D., cum laude, 1974) and Butler University (B.A. with honors, 1968). He served as Judge of the Marion Superior Court from 1988 to 1994 and as presiding judge of the court in 1992. From 1974 to 1988, he practiced law with the firm of Kroger, Gardis & Regas in Indianapolis in the areas of commercial and business litigation and served as managing partner of the firm. Since 1990, he has held an appointment as Visiting Professor of Law and Management at the Krannert Graduate School of Management at Purdue University. Judge Kirsch is a past-president of the Indianapolis Bar Association and of the Indianapolis Bar Foundation and a former member of the Board of Visitors of the Indiana University School of

Law-Indianapolis. He is a past-president of the United Way/Community Service Council Board of Directors and a current or former member of the Board of Directors of the United Way of Central Indiana, the Board of Associates of Rose Hulman Institute of Technology, and of the Boards of Directors of the Goodwill Industries Foundation of Central Indiana, Community Centers of Indianapolis, the Indianapolis Urban League, the Legal Aid Society of Indianapolis, and the Stanley K. Lacy Leadership Association. He is a Fellow of the Indiana State Bar Foundation and of the Indianapolis Bar Foundation. He is a frequent speaker and lecturer and has served on the faculty of more than 200 continuing legal education programs. He has been named a Sagamore of the Wabash by four different governors. Judge Kirsch and his wife Jan have two children, Adam, a senior at Wabash College and Alexandra, a senior at Cathedral High School. Chief Judge Kirsch was retained on the Court in 1996 and stands again for retention in this fall's election.

The 15 members of the Indiana Court of Appeals issue some 2,500 written opinions each year.

The Court of Appeals hears cases only in three-judge panels. Panels rotate three times per year. Cases are randomly assigned.

## TODAY'S PANEL OF JUDGES

### **Hon. Patricia A. Riley (Jasper County)**

- Judge of the Court of Appeals since January 1994

**Patricia A. Riley**, currently the presiding judge for the Court of Appeals' Fourth District, was named to the Indiana Court of Appeals by Governor Evan Bayh in January of 1994. A native of Rensselaer, Indiana, Judge Riley earned her bachelor's degree from Indiana University-Bloomington in 1971 and her law degree from the Indiana University School of Law-Indianapolis in 1974. Early in her career she served as a Deputy Prosecutor in Marion County and a public defender in Marion and Jasper counties before entering into private practice in Jasper County. She served as a judge of the Jasper Superior Court from 1990 to 1993. She is a former associate professor at St. Joseph's College in Rensselaer and currently an adjunct professor of law at the Indiana University School of Law—Indianapolis.

Judge Riley's legal memberships include the Indianapolis Bar Association, the Marion County Bar Association, and the Indiana State Bar Association, including co-chair of the ISBA's Racial Diversity in the Profession Section; member, Women in the Law Committee; and member, Committee on Improvements in the Judicial System. Judge Riley is the former chair of the Appellant Practice Section of the American Bar Association, and a member of the ABA's Judicial Division International Courts Committee. She is a member of the Indiana Judges Association and the Board of Directors of the National Association of Women Judges. Judge Riley is the mother of two sons. She was retained on the Court by election in 1996 and stands again in this fall's election.

## AMICUS BRIEFS

*A person who is not a party to a lawsuit may file a brief of amicus curiae, with permission of the Court, if he or she has a strong interest in the subject matter.*

- There are no amicus filings in this case.

## TODAY'S PANEL OF JUDGES

### **Hon. Margret G. Robb** **(Tippecanoe County)**

- Judge of the Court of Appeals since July 1998

**Margret G. Robb** was appointed to the Indiana Court of Appeals in July 1998 by Gov. Frank O'Bannon. She holds a B.S. and M.S. in Business Economics from Purdue, and is a 1978 Magna Cum Laude graduate of Indiana University School of Law - Indianapolis. Prior to joining the Court she was engaged in the general practice of law for 20 years in Lafayette and was a Chapter 11, 12 and a Standing Chapter 7 Bankruptcy trustee for the Northern District of Indiana; and the Federal Advisory Committee for the expediting of Federal Litigation. She was a registered family and civil law mediator and served as a Tippecanoe County Deputy Public Defender. She chairs the Supreme Court Task Forces on Family Courts, the development of Trial Court Local Rules, and is involved in several projects to benefit the Indiana legal system. She has also served as a member of the Indiana Board of Law Examiners, the Governance Committee of the Supreme Court IOLTA (Interest On Lawyers' Trust Accounts) Committee; the Federal Advisory Committee on Local Rules for the Federal Court for the Northern District of Indiana; and Federal Advisory Committee for the expediting of Federal Litigation.

Judge Robb has held numerous Board positions for and been an

officer for the Indiana State Bar Association, Indiana Bar Foundation, Tippecanoe County Bar Association, Indianapolis Bar Association, Indianapolis Bar Foundation, American Bar Foundation, National Association of Women Judges, Indiana University School of Law at Indianapolis Alumni Association, and speaks frequently on legal topics for attorneys and other judges.

Judge Robb was Founding Chair of the Governor Otis Bowen's Commission on the Status of Women; was a recipient of the 1993 Indiana State Bar Association's "Celebrating 100 Years of Women in the Legal Profession" award; the 2001 Maynard K. Hine distinguished alumni award, given in recognition of support and service to IUPUI and Indiana University; the 2004 Bernadette Perham "Indiana Women of Achievement" Award, bestowed by Ball State University in honor of one of their outstanding Award, bestowed by Ball State University in honor of one of their outstanding professors; the 2005 Indiana State Bar Association's Women in the Law Recognition Award; and the 2006 Tippecanoe County YMCA Salute to Women "Women of Distinction" Award. Judge Robb, who was retained on the Court of Appeals by election in 2000, lives in West Lafayette with her husband, a Professor of Communication at Purdue. Their son, Douglas, a graduate of the U. S.N.A., recently embarked on his first deployment.

## ATTORNEYS FOR THE PARTIES

### **For Appellants, Idan (John) Filip and Valaria Filip:**

**Robert W. Mysliwiec  
South Bend, Indiana**

**Robert W. Mysliwiec** was born in Grand Rapids, Michigan. He attended the University of Notre Dame where he received his undergraduate degree in Business in 1971 and his law degree in 1974.

Following graduation, he was a member of the South Bend law firm of Jones Obenchain until

he opened his own law office in South Bend, Indiana in January of 2000.

Mr. Mysliwiec represents both plaintiffs and defendants and specializes in litigation, commercial law and contract law. He is licensed in both the States of Indiana and Michigan.

Mr. Mysliwiec has argued several cases in the Indiana Court of Appeals and Indiana Supreme Court, as well as cases in the U.S. Court of Appeals for the 7th Circuit.

### **For Appellees, Carrie Block and 1st Choice Insurance**

**Agency:**

**Philip E. Kalamaros  
Hunt Suedhoff Kalamaros, LLP  
St. Joseph, Michigan**

**Philip E. Kalamaros** has been a partner and manager of the St. Joseph, Michigan office of Hunt Suedhoff Kalamaros LLP since 2000. From 1983 to 2000 he practiced law as part of Edward N. Kalamaros and Associates, PC in South Bend, serving as managing shareholder and president from 1994 to 2000. Mr. Kalamaros practices law in all Indiana counties and in the western half of the Lower Peninsula of Michigan and is admitted to the bar in Indiana, Michigan, the United States District Courts, the U.S. Court of Appeals, and the U.S. Supreme Court.

Mr. Kalamaros graduated from the University of Notre Dame with a B.B.A degree in 1984 and his J.D. in 1987. He is a member of the St. Joseph County (IN), Berrien County

(MI), 7<sup>th</sup> Circuit, Indiana State and American Bar Associations as well as the State Bar of Michigan. He was a member of the Association of Trial Lawyers of America from 1987 to 2003; was a Director of the Defense Trial Counsel of Indiana from 1997 to 2000 and Amicus Chairman from 1992 to 1997; and a member of the Defense Trial Counsel of Michigan, the Defense Research Institute National Council of Self Insureds, the Indiana Self Insurers Association, the National Health Lawyers Association, and the Notre Dame Law Association. He is a Fellow of the Indiana Bar Foundation and a Director of the Indiana Continuing Legal Education Forum. He is a frequent lecturer and author of published articles on the law.

Mr. Kalamaros focuses his law practice primarily on Errors and Omissions, Medical and Professional Malpractice Defense, Dram Shop, Insurance Coverage, Employment Practices, Civil Appeals, Insurance Defense, Civil Rights Defense, Truck and Heavy Equipment, Torts and Civil Litigation, First Party Litigation, Business Planning and Strategy, and Worker's Compensation.